

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #05	CCRB Case #: 202003860	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/02/2020 9:30 PM	Location of Incident: 9th Avenue and West 53rd Street	18 Mo. SOL 5/4/2022	Precinct: 18		
Date/Time CV Reported Wed, 06/03/2020 12:06 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 06/03/2020 12:06 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. LT David Cuce	00000	928133	MTN PCT
3. CPT Thomas Smith	00000	939495	001 PCT
4. SSA Christopher Hewitson	02150	917756	MTN PCT
5. INS Mark Iocco	00000	917779	RM BUR

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Steven Lowe	28737	966176	MTN PCT
2. POM Christophe Laietta	19289	949192	MTN PCT
3. POM Michael Mcglynn	31699	935281	MTN PCT
4. POM Franco Condo	05840	967458	MTN PCT
5. POF Atisha Samuel	14987	962772	MTN PCT
6. POF Melissa Gillott	26391	967085	103 PCT
7. POM Christopher Mallette	27281	957800	MTN PCT
8. POM Ronald Perillo	21056	927346	MTN PCT
9. POM Robert Yturraspe	14405	952362	MTN PCT
10. POM Steven Glibbery	26965	967088	113 PCT
11. POM Sean McGowan	23735	966205	103 PCT
12. DTS Lance Trent	04179	883395	MTN PCT

Officer(s)	Allegation	Investigator Recommendation
A . LT David Cuce	Force: Lieutenant David Cuce used physical force against § 87(2)(b)	
B . CPT Thomas Smith	Force: Captain Thomas Smith used physical force against § 87(2)(b)	
C . An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
D . CPT Thomas Smith	Abuse: Captain Thomas Smith damaged § 87(2)(b) property.	
E . An officer	Abuse: An officer interfered with § 87(2)(b) use of a recording device.	
F . An officer	Abuse: An officer searched § 87(2)(b) recording device.	
G . SSA Christopher Hewitson	Force: Sergeant Christopher Hewitson used physical force against § 87(2)(b)	
H . SSA Christopher Hewitson	Force: Sergeant Christopher Hewitson struck § 87(2)(b) with a baton.	
I . SSA Christopher Hewitson	Force: Sergeant Christopher Hewitson used physical force against § 87(2)(b)	
J . SSA Christopher Hewitson	Abuse: Sergeant Christopher Hewitson damaged § 87(2)(b) property.	
K . SSA Christopher Hewitson	Abuse: Sergeant Christopher Hewitson interfered with § 87(2)(b) use of a recording device.	
L . An officer	Force: An officer used physical force against an individual.	
M . SSA Christopher Hewitson	Untruthful Stmt.: Sergeant Christopher Hewitson provided a false official statement to the CCRB.	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

### Case Summary

On June 3, 2020, § 87(2)(b) filed this complaint on the CCRB's website on behalf of two individuals he did not know, one of whom the investigation identified as § 87(2)(b). On June 8, 2020, reporting non-witness § 87(2)(b) forwarded an email complaint by § 87(2)(b) directly to CCRB Executive Director Darche. This generated duplicate case § 87(2)(b) which was incorporated into this case. On June 9, 2020, § 87(2)(b) filed another complaint on the CCRB website.

On June 2, 2020, shortly before 9:30 p.m., a Black Lives Matter protest was marching south past the block of the Midtown North Precinct stationhouse at 9<sup>th</sup> Avenue and West 54<sup>th</sup> Street in Manhattan. Midtown North Precinct Commanding Officer Inspector Mark Iocco (now assigned to the Risk Management Bureau) ordered his subordinates to begin arresting protesters for violating the Mayor's 8 p.m. curfew. Midtown North Precinct officers—including Captain Thomas Smith (now assigned to the 1<sup>st</sup> Precinct), Lieutenant David Cuce (now assigned to the Criminal Intelligence Section), and Sergeant Christopher Hewitson—chased protesters down 9<sup>th</sup> Avenue to the intersection with West 53<sup>rd</sup> Street. Capt. Smith and Lt. Cuce grabbed § 87(2)(b) and took him to the ground on the sidewalk to arrest him (**Allegations A–B: Force**, § 87(2)(g)). Capt. Smith broke § 87(2)(b) protest sign (**Allegation C: Abuse of Authority**: § 87(2)(g)). An officer told § 87(2)(b) “Give me your fucking hands,” (**Allegation D: Discourtesy**, § 87(2)(g)). An officer allegedly terminated § 87(2)(b) cell phone recording, thereby interfering with his use of a recording device and searching that recording device (**Allegations E–F: Abuse of Authority**, § 87(2)(g)).

Several feet away, § 87(2)(b) was photographing § 87(2)(b) arrest in his capacity as a photojournalist for the § 87(2)(b). Sgt. Hewitson ran up to § 87(2)(b) and used physical force against him (**Allegation G: Force**, § 87(2)(g)). In doing so, Sgt. Hewitson allegedly struck § 87(2)(b) in the face with a baton (**Allegation H: Force**, § 87(2)(g)). § 87(2)(b) backed away from Sgt. Hewitson, held out his press pass, and yelled that he was with the media. Sgt. Hewitson ran at § 87(2)(b) again. § 87(2)(b) turned and ran away from Sgt. Hewitson. Sgt. Hewitson pushed § 87(2)(b) in the back, causing him to fall face-first onto the sidewalk (**Allegation I: Force**, § 87(2)(g)). § 87(2)(b) sustained a hematoma to his cheek, abrasions and bruises to his arms, and abrasions to his legs. Sgt. Hewitson's push also caused § 87(2)(b) camera and camera lenses to fly out of his hands and break upon impact with the ground—causing approximately \$800 in property damage (**Allegation J: Abuse of Authority**, § 87(2)(g)). In taking these actions, Sgt. Hewitson interfered with § 87(2)(b) use of a recording device (**Allegation K: Abuse of Authority**, § 87(2)(g)). Shortly thereafter, an unidentified officer pushed an unidentified civilian in the back (**Allegation L: Force**, § 87(2)(g)).

Lt. Cuce arrested § 87(2)(b) for resisting arrest, fourth-degree criminal possession of a weapon, unlawful assembly, third-degree menacing, violating the Mayor's executive order curfew, and disorderly conduct (**Board Review 01**). § 87(2)(b) was released from the Midtown North Precinct stationhouse that night with a Desk Appearance Ticket (DAT) for resisting arrest (**Board Review 02**). § 87(2)(b) was not arrested or issued any summonses.

Sgt. Hewitson provided false official statements during his CCRB interview (**Allegation M: Untruthful Statement**, § 87(2)(g), § 87(4-b)).

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

The investigation obtained cellphone footage from § 87(2)(b) (**Board Review 03–06**, summarized at **Board Review 07**), § 87(2)(b) (**Board Review 08**, summarized at **Board Review 09**), § 87(2)(b) reporter § 87(2)(b) (**Board Review 10–15**, summarized at **Board Review 16**), eyewitness § 87(2)(b) (**Board Reviews 17–19**, summarized at **Board Review**

20), § 87(2)(b) (Board Review 21–22, summarized at Board Review 23), eyewitness § 87(2)(b) (Board Review 24–25, summarized at Board Review 26), and eyewitness § 87(2)(b) (Board Review 27–28, summarized at Board Review 29). The investigation also obtained news footage from the § 87(2)(b) (Board Review 30, summarized at Board Review 31) and surveillance footage from a nearby restaurant, The Meatball Shop (Board Review 32–34, summarized at Board Review 35). The investigation made multiple unsuccessful requests for BWC footage (Board Review 36–37). All references to video evidence below refer to the time stamp in the video player, and not to any on-screen clock embedded in the footage itself.

§ 87(2)(b) published an article in the § 87(2)(b) regarding this incident (Board Review 38). § 87(2)(b) also published an article for § 87(2)(b) (Board Review 39) referencing this incident. § 87(2)(b) posted his videos of the incident to Twitter and the Twitter thread quickly went viral: the main video garnered approximately 147,000 views within a matter of days. Given this press coverage, the CCRB marked this case as sensitive on June 6, 2020.

This investigation was delayed by the COVID-19 global pandemic, issues with remote MOS interviews, delays in obtaining important NYPD documents, and the NYPD's overall lack of documentation regarding its deployment of officers at Black Lives Matter protests on June 2, 2020.

### Explanation of Subject Officer Identification

As will be noted below, Sgt. Hewitson denied that he was the officer who used force against § 87(2)(b). The investigation used various evidence to identify him as the subject officer.

First, it should be noted that § 87(2)(b) incorrectly identified the subject officer in a Notice of Claim and during a follow-up phone call with the CCRB regarding that Notice of Claim (Board Review 40–41). § 87(2)(b) claimed that the subject sergeant was Sgt. William Balunas, who was an administrative crime analyst at the 6th Precinct. § 87(2)(b) saw Sgt. Balunas at a protest near Columbus Circle a few weeks after the incident, mistakenly believed that he was the subject sergeant based largely on his uniform chevrons and riot helmet, and obtained his name and shield number by photographing him. Sgt. Balunas and Sgt. Hewitson have similar builds and appearances. The investigation interviewed Sgt. Balunas and was able to confirm his testimony that he was not working at the time of the incident (Board Review 42–43).

The incident was recorded on video from multiple angles. § 87(2)(b) journalist § 87(2)(b) footage (Board Review 12) shows officers chasing protesters down 9<sup>th</sup> Avenue to West 53<sup>rd</sup> Street. At 00:40, § 87(2)(b) enters the frame from the right (wearing shorts and a dark t-shirt) while taking photographs, just seconds before the incident began. § 87(2)(b) photographs from that time show a white male sergeant in uniform standing by the construction site (on the far right of the photos in Board Review 44).

The § 87(2)(b) footage (Board Review 30, beginning at 00:19), shows an interview with eyewitness § 87(2)(b) after the incident occurred. § 87(2)(b) recounts to the camera that an officer pushed a journalist with a press pass to the ground. At 00:30, the footage cuts to the incident § 87(2)(b) was describing, which is footage of a white male sergeant in uniform running into § 87(2)(b) as he is taking photographs in the middle of West 53<sup>rd</sup> Street, several feet away from § 87(2)(b) arrest. § 87(2)(b) runs to the far side of the street. The camera briefly pans away and then shows the sergeant running away from § 87(2)(b).

§ 87(2)(b) recorded cellphone footage (Board Review 17) from a different angle which shows what happened when the § 87(2)(b) footage panned away. His footage shows § 87(2)(b) photographing from several feet away as Lt. Cuce and Capt. Smith grapple with § 87(2)(b) while arresting him. The subject sergeant runs into the intersection from the north, from the direction of the stationhouse barricade and the construction site. § 87(2)(b) pans the camera away before the footage captures any physical contact and therefore misses the initial physical contact shown in the § 87(2)(b) footage. He pans the camera back to § 87(2)(b) in time to capture the sergeant running after § 87(2)(b) a second time and shoving him to the ground from behind.



The investigation learned that officers from the Midtown North Precinct manned the barricade at West 54<sup>th</sup> Street and 9<sup>th</sup> Avenue, and that they were assisted by a Mobile Field Force (MFF) protest detail of officers from the 103<sup>rd</sup> and 113<sup>th</sup> Precincts. Detail rosters from those commands revealed that there were no male sergeants working the protest detail. As a result, the investigation concluded that the subject sergeant was from the Midtown North Precinct.

From the pool of male sergeants from the Midtown North Precinct working either Tour 2 or Tour 3 that night, the investigation was able to rule out every sergeant except Sgt. Hewitson based on a combination of whether they were still working at the incident time, whether they were assigned a Taser (as the subject sergeant is seen in the footage with a Taser holstered on his belt), their pedigree information, and their physical appearance. Sgt. Hewitson was the only sergeant who could not be ruled out during that process.

§ 87(2)(b) (**Board Review 48**) described the subject as a heavyset white man in uniform who was approximately 5'8" tall. The footage shows him to have sergeant's chevrons on his uniform sleeve. § 87(2)(b) subsequently noted in an email (**Board Review 49**) that the subject was also depicted in a video he took at the police barricade before the officers began chasing protesters (the uniformed officer in the middle of the screen wearing a helmet and touching his chinstrap in pages 2 and 3 of the PDF at **Board Review 47**). According to the NYPD, Sgt. Hewitson stands 5'8" tall and weighs 170 pounds, and his MOS photograph (**Board Review 50**) shows him to have a heavyset or stocky appearance. Sgt. Hewitson's MOS photograph is not inconsistent with the face of the subject in § 87(2)(b) footage of the incident, as well as the officer § 87(2)(b) pointed out in his footage from the barricade beforehand.

Another important point of comparison is the set of tenure and merit badges above the subject sergeant's shield. Comparing a known image of Sgt. Hewitson from BWC footage in CCRB case § 87(2)(b) filmed less than a week before the incident, shows Sgt. Hewitson to have a similar amount of above-the-shield badges as the subject depicted in § 87(2)(b) footage of the incident (subject from § 87(2)(b) footage at page 6 of the PDF in **Board Review 47**; BWC image of Sgt. Hewitson from a few days prior at **Board Review 51**).

Additionally, the evidence indicates Sgt. Hewitson was likely near the construction site just north of the intersection, which was the location from which the subject sergeant came when he first charged at § 87(2)(b). The video footage shows the subject coming from that area, and § 87(2)(b) photographs show a white uniformed sergeant with a similar appearance standing at that location a few seconds before the incident began.

Sgt. Hewitson (**Board Review 45**) acknowledged being part of the crowd of officers who rushed out of the barricade and down 9<sup>th</sup> Avenue to the intersection with West 53<sup>rd</sup> Street. He further acknowledged assisting with an unrelated stop of two protesters near the construction site and then remaining at the intersection for 30-45 minutes. During that time, Sgt. Hewitson recounted that he moved protesters along primarily with verbal commands, and that he may have physically guided some along, but he denied using any physical force and denied that he made physical contact with any civilians who subsequently fell the ground. When shown video footage of the subject using force against § 87(2)(b) Sgt. Hewitson repeatedly denied that the video depicted him, denied taking the actions shown in the video, and claimed to be unable to identify himself in still images from that footage.

The investigation showed that same footage to Sgt. Hewitson's then-supervisor, Inspector Iocco. Inspector Iocco (**Board Review 46**) testified that, although he was not "100 percent" sure, he believed that the sergeant depicted in the screenshot of § 87(2)(b) footage was in fact Sgt. Hewitson (footage in **Board Review 17**; screenshot on page 6 of the PDF in **Board Review 47**).

Inspector Iocco also provided further context for identifying Sgt. Hewitson. Although Inspector Iocco stayed one block north of where the incident occurred, he recounted that he spoke with Sgt. Hewitson, Lt. Cuce, and Capt. Smith immediately after the incident. At that point, Sgt. Hewitson said something to Inspector Iocco about an incident involving Lt. Cuce and Capt. Smith. Sometime on that block, and later on at the stationhouse, one officer from among the group of Sgt.

Hewitson, Lt. Cuce, and Capt. Smith told Inspector Iocco that there was individual near Lt. Cuce and Capt. Smith's arrest of § 87(2)(b). This officer recounted to Inspector Iocco that the individual was "too close" to the arrest, that the individual was "right on top of us taking photographs," that the individual was unhappy about how the incident resolved itself, and that the individual's camera may have fallen during the incident. Inspector Iocco could not remember with certainty whether the officer who recounted this information to him was Sgt. Hewitson, Lt. Cuce, or Capt. Smith, but he was certain that it was an officer from among those three.

Capt. Smith and Lt. Cuce were busy grappling with § 87(2)(b) when the subject sergeant used force against § 87(2)(b); they were likely not in a position to have seen the incident with § 87(2)(b) in real time. The investigation therefore found it most likely that Sgt. Hewitson was the officer recounting the incident to Inspector Iocco shortly after it happened, and that he was referring to his own interaction with § 87(2)(b). Given all of the above, the investigation credited Inspector Iocco's identification of Sgt. Hewitson as the subject sergeant in the footage—an identification which is the only one consistent with all of the contextual evidence surrounding the incident.

### **Findings and Recommendations**

**Allegation (A) Force: Lieutenant David Cuce used physical force against § 87(2)(b)**

**Allegation (B) Force: Capt. Thomas Smith used physical force against § 87(2)(b)**

The following facts are undisputed: § 87(2)(b) violated the Mayor's 8 p.m. curfew and was therefore subject to arrest when Lt. Cuce and Capt. Smith approached him (**Board Reviews 52–53**). When they tried to arrest him, they grabbed him and eventually brought him to the ground to handcuff him. § 87(2)(b) verbally and physically resisted arrest by pulling away from the officers and yelling. § 87(2)(b) was wearing a backpack and holding a protest sign affixed to a large piece of wood, which Lt. Cuce and Capt. Smith felt posed logistical and safety concerns for how to put him into custody. § 87(2)(b) was arrested for resisting arrest, fourth-degree criminal possession of a weapon, unlawful assembly, third-degree menacing, violating the Mayor's executive order curfew, and disorderly conduct under the subsection for refusing to disperse, but was released a few hours later with a DAT for resisting arrest (**Board Review 01–02**).

Numerous angles of cellphone footage capture various parts of § 87(2)(b) arrest. Specifically, footage from § 87(2)(b) himself (**Board Review 08**), two eyewitnesses across the intersection, § 87(2)(b) (**Board Review 05**) and § 87(2)(b) (**Board Review 24**), and an eyewitness standing near § 87(2)(b) (**Board Review 27**), collectively depict Lt. Cuce and Capt. Smith approaching § 87(2)(b) and taking him to the ground as he screams loudly. See **Board Review 54** for a compilation of photographs that § 87(2)(b) took of § 87(2)(b) arrest, demonstrating § 87(2)(b) physical resistance to being arrested.

NYPD Patrol Guide Procedure 221-01 (**Board Review 55**) authorizes the use of force when it is "reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances."

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Capt. Thomas Smith damaged § 87(2)(b) property.**

The following facts are undisputed: When Lt. Cuce and Capt. Smith arrested § 87(2)(b) he was carrying a homemade protest sign made of a large wooden plank attached to a traffic sign, on which he had inscribed the word "DEMILITARIZE." § 87(2)(b) physically and verbally resisted arrest, and Lt. Cuce and Capt. Smith ultimately took him to the ground to handcuff him. By the time § 87(2)(b) was fully handcuffed, the wooden part of his protest sign had become broken. As shown in the latter part of a video (**Board Review 28**) from § 87(2)(b)

§ 87(2)(b) Capt. Smith and other officers picked up the pieces of the broken sign after arresting § 87(2)(b)

§ 87(2)(b) (Board Review 56) alleged that Capt. Smith deliberately broke the sign in half by leaning it against the ground and stepping downward onto the wooden handle.

§ 87(2)(b) recounted (Board Review 48) seeing Capt. Smith grab the wooden stick from § 87(2)(b) and holding at least part of it in his hand. § 87(2)(b) did not describe Capt. Smith as ever stepping on the sign or leaning it against the ground. § 87(2)(b) also photographed § 87(2)(b) arrest during this time. He provided his photographs to the CCRB, a compilation of which is available at Board Review 54. They show Capt. Smith handling the wooden part of the protest sign while arresting § 87(2)(b). The photographs do not provide a completely comprehensive view of what happened, but they appear to show that Capt. Smith held onto the protest sign while it was intact, and then immediately afterwards, he held a detached piece of the sign after it had broken off.

Lt. Cuce (Board Review 57) was unable to account for how § 87(2)(b) sign became broken. Lt. Cuce did not notice whether Capt. Smith intentionally broke the sign, and only remembered that the sign was intact as he approached § 87(2)(b) and broken once they stood him up after handcuffing him.

Both Lt. Cuce and Capt. Smith (Board Review 58) described § 87(2)(b) protest sign as a potential weapon. In addition to this safety concern, Capt. Smith also believed the sign posed a physical impediment to handcuffing § 87(2)(b). Capt. Smith decided that he needed to remove the protest sign from § 87(2)(b) hands. Capt. Smith initially denied breaking the sign and did not believe the sign was broken at all. Upon reviewing § 87(2)(b) photographs showing the broken sign in his own hands, Capt. Smith acknowledged that the sign did break during the arrest, and he guessed that it must have happened when he tried to take it away from § 87(2)(b). Capt. Smith did not describe this as an intentional attempt to break the sign.

The investigation does not credit § 87(2)(b) claim that Capt. Smith leaned the sign against the ground and stepped downwards onto the wooden part in a specific attempt to break it. The preponderance of the evidence indicates that the sign most likely became broken from Capt. Smith trying to pull the sign out of § 87(2)(b) hands as he held tightly to it and refused to release it.

Property damage claims are properly analyzed under the Fourth Amendment's reasonableness standard. Onderdonk v. State, 170 Misc. 2d 155 (1996) (Board Review 59).

§ 87(2)(g)

The property damage was most likely an inadvertent consequence of Capt. Smith trying to dispossess § 87(2)(b) of the sign and place him into custody safely. § 87(2)(g)

#### **Allegation (D) Discourtesy: An officer spoke discourteously to § 87(2)(b)**

§ 87(2)(b) cell phone video (Board Review 08) of his arrest concludes with a male officer saying to him twice, "Give me your fucking hands." § 87(2)(b) (Board Review 56) testified that this voice might have been Lt. Cuce's.

Lt. Cuce (Board Review 57) testified that he did not remember whether he gave § 87(2)(b) any commands to stop resisting, whether he or Capt. Smith ever said, "Give me your fucking hands," or whether he or Capt. Smith used any profanity with § 87(2)(b) at all. Lt. Cuce did not know whose voice was depicted using profanity in the video and did not believe that it was his own. Lt. Cuce did not know if the voice was that of Capt. Smith, but he did not think it sounded like Capt. Smith's voice.

Capt. Smith (Board Review 58) recounted that an officer gave § 87(2)(b) commands to put his hands behind his back or give up his hands. Capt. Smith did not remember if he gave any



such commands. Capt. Smith did not remember hearing any officer use the word “fuck” in interacting with § 87(2)(b). Upon reviewing § 87(2)(b) cellphone video, Capt. Smith denied that the voice saying “Give me your fucking hands” was his own, and said he did not know if the voice in the video making that statement was Lt. Cuce’s.

The footage itself does not visually depict which officer uses profanity. The investigation was unable to determine whether the voice in the video matched the voices of Lt. Cuce or Capt. Smith, even when compared to their CCRB interview audio recordings. Given that neither officer was able to identify the voice, the investigation was unable to determine which officer made this statement.

In its mission statement, Patrol Guide Procedure 200-02 (Board Review 60), the NYPD pledges to “respect the dignity of each individual and render our services with courtesy and civility.” The purpose of Patrol Guide Procedure 203-09 is to “ensure uniformed members of the service interact with members of the public in a professional manner” (**Board Review 61**). The NYPD’s disciplinary decisions “have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer’s verbal slip does not rise to the level of actionable misconduct” NYPD Disciplinary Case No. 76927/04 (2004) (Board Review 62).

§ 87(2)(g)

**Allegation (E) Abuse of Authority: An officer interfered with § 87(2)(b) use of a recording device.**

**Allegation (F) Abuse of Authority: An officer searched § 87(2)(b) recording device.**

§ 87(2)(b) cellphone video abruptly terminates partway through Lt. Cuce and Capt. Smith’s struggle to arrest him. § 87(2)(b) (**Board Review 56**) alleged that either Lt. Cuce or Capt. Smith intentionally terminated the recording. However, § 87(2)(b) did not remember seeing either officer terminate the recording in real time. § 87(2)(b) presumed that one of them must have done so solely because the footage ended abruptly during the arrest.

Lt. Cuce (**Board Review 57**) denied that he or Capt. Smith ever intentionally touched § 87(2)(b) cellphone or turned off his cellphone recording. However, Lt. Cuce did acknowledge that it was possible he inadvertently touched the phone in the struggle to take § 87(2)(b) to the ground and handcuff him. Lt. Cuce was unable to account for why § 87(2)(b) cellphone recording terminated when it did.

Capt. Smith (**Board Review 58**) knew that § 87(2)(b) was holding a cellphone during his arrest, but he denied touching it. Capt. Smith did not know if Lt. Cuce ever did so. Capt. Smith denied terminating the video recording on § 87(2)(b) phone. Capt. Smith had “no idea” if Lt. Cuce did so. Generally, officers remove objects from arrestees’ hands while handcuffing them, so Capt. Smith believed it was possible one of them did remove the phone from § 87(2)(b) hand.

§ 87(2)(b) had no logical reason for believing that one of the officers deliberately terminated his cellphone recording. The footage is not dispositive and offers only a limited, chaotic perspective, but it is entirely consistent with an inadvertent termination of the video by the officers or even by § 87(2)(b) himself while he resisted arrest. As a result, the investigation was unable to determine whether Capt. Smith or Lt. Cuce was the subject officer, and indeed whether any officer at all deliberately terminated the recording. § 87(2)(g)



**Allegation (G) Force: Sergeant Christopher Hewitson used physical force against § 87(2)(b).**

**Allegation (H) Force: Sergeant Christopher Hewitson struck § 87(2)(b) with a baton.**

**Allegation (I) Force: Sergeant Christopher Hewitson used physical force against § 87(2)(b).**

**Allegation (J) Abuse of Authority: Sergeant Christopher Hewitson damaged § 87(2)(b).**

**property.**

**Allegation (K) Abuse of Authority: Sergeant Christopher Hewitson interfered with § 87(2)(b).**

**use of a recording device.**

The following facts are undisputed: When Inspector Iocco instructed his officers to start making curfew arrests, officers including Capt. Smith, Lt. Cuce, and Sgt. Hewitson chased protesters down 9<sup>th</sup> Avenue towards its intersection with West 53<sup>rd</sup> Street. § 87(2)(b) was photographing Lt. Cuce and Capt. Smith's arrest of § 87(2)(b). Sgt. Hewitson ran up to § 87(2)(b) and used physical force against him, interrupting his photography. § 87(2)(b) backed away from Sgt. Hewitson, who then charged at him again. § 87(2)(b) turned and ran away across the street. Sgt. Hewitson pushed § 87(2)(b) from behind, causing him to fall face-first onto the sidewalk. When § 87(2)(b) fell, his camera and lenses broke on the ground. § 87(2)(b) was not arrested or issued any summonses.

The lead-up to the incident is captured in § 87(2)(b) video (entirety of **Board Review 12**). The § 87(2)(b) footage (**Board Review 30**, beginning at 00:29) shows Sgt. Hewitson first using physical force against § 87(2)(b). The footage is unclear as to what exactly Sgt. Hewitson did to § 87(2)(b). Sgt. Hewitson runs into § 87(2)(b) and uses some kind of physical force against him, causing him to stumble backward. § 87(2)(b) moves a few feet away from Sgt. Hewitson, turns around, and attempts to hold up his press pass. Sgt. Hewitson charges at § 87(2)(b) again as they move out of frame. § 87(2)(b) footage (**Board Review 17**) shows Sgt. Hewitson chasing § 87(2)(b) across the street and shoving him to the ground from behind. At the moment Sgt. Hewitson shoved § 87(2)(b) was attempting to move away from him. At no point in any of the footage does § 87(2)(b) ever appear to do anything threatening, attempt to interfere in § 87(2)(b) arrest, or attack any officers.

§ 87(2)(b) (**Board Review 48**) recounted that he wore a United States Department of State-issued press pass on a lanyard around his neck (photograph of the press pass at **Board Review 63**), which clearly states "PRESS" highlighted in yellow. § 87(2)(b) did not independently remember what exact kind of physical force Sgt. Hewitson used against him when he first made physical contact. However, he came to believe that Sgt. Hewitson struck him in the head with his baton during that first physical contact. § 87(2)(b) reached that conclusion based solely on reviewing the § 87(2)(b) footage during a prior interview with the New York State Attorney General's Office. He had no independent recollection of Sgt. Hewitson striking him with the baton.

§ 87(2)(b) further recounted that he held out his press pass to Sgt. Hewitson and shouted, "I'm media! I work for the § 87(2)(b)." § 87(2)(b) described this as happening before Sgt. Hewitson made first physical contact with him, but the § 87(2)(b) footage appears to show him holding out his press pass from around his neck in between Sgt. Hewitson's two uses of force.

When Sgt. Hewitson pushed § 87(2)(b) to the ground, § 87(2)(b) body essentially flew through the air and he landed hard on the sidewalk. § 87(2)(b) camera and camera lenses broke on the ground as a result of Sgt. Hewitson's push and his subsequent fall. § 87(2)(b) needed to repair these items to continue his livelihood as a photojournalist, and the repair bill totaled approximately \$800 (see **Board Review 64** for a compilation of photographs showing camera and lens damage; see **Board Review 65–66** for repair invoices). § 87(2)(b) sustained a hematoma to his cheek, abrasions and bruises to his arms, and abrasions to his legs (see **Board Review 67** for a compilation of § 87(2)(b) injury photos; see Privileged Records for his medical records from urgent care a few days after the incident).

§ 87(2)(b) testimony (**Board Review 68**) was generally consistent with § 87(2)(b) and with the video footage. § 87(2)(b) recounted that § 87(2)(b) wore his press credentials visibly outside his clothing before Sgt. Hewitson charged at him. Sgt. Hewitson did not say anything to § 87(2)(b) before using force against him. During this time, § 87(2)(b) screamed at Sgt. Hewitson, “I’m press!” § 87(2)(b) also repeatedly called out, “He’s press!”

§ 87(2)(b) reporter § 87(2)(b) provided a telephone statement (**Board Review 69**). § 87(2)(b) refreshed his recollection of the incident by reviewing his Twitter thread from the incident as well as the videos he recorded. He recounted seeing Sgt. Hewitson throw § 87(2)(b) to the ground while § 87(2)(b) pointed to his press pass around his neck and shouted, “I’m a reporter, I’m a reporter!” § 87(2)(b) did not see whether Sgt. Hewitson struck § 87(2)(b) with a baton.

§ 87(2)(b) another independent eyewitness, testified (**Board Review 70**) that he watched the incident unfold from his § 87(2)(b) apartment’s fire escape on the southeast corner of the intersection. § 87(2)(b) saw Sgt. Hewitson push § 87(2)(b) to the ground, but he was not paying attention to what happened beforehand. § 87(2)(b) did not hear whether § 87(2)(b) announced himself as a member of the press before Sgt. Hewitson pushed him to the ground.

§ 87(2)(b) another independent eyewitness watching from a nearby fire escape, testified (**Board Review 71**) that he saw § 87(2)(b) photographing § 87(2)(b) arrest. However, he emphasized that he was not paying to § 87(2)(b) during that time, and therefore did not see any of what happened to him afterward.

Capt. Smith (**Board Review 58**) testified that while he was arresting § 87(2)(b) he specifically heard someone saying, “I’m with the press, I’m with the press,” or otherwise verbally identifying themselves as being “with the media.” Capt. Smith could not describe the person who made this statement. There were some other civilians in the vicinity of § 87(2)(b) arrest, but Capt. Smith did not think that any of them posed a problem or safety threat to him or the arrest. Lt. Cuce (**Board Review 57**) similarly did not describe any safety threats from third parties while trying to arrest § 87(2)(b).

As described above, Inspector Iocco (**Board Review 46**) recounted that after the incident with § 87(2)(b) an officer—identified as Sgt. Hewitson—reported to him that there was individual near Lt. Cuce and Capt. Smith’s arrest of § 87(2)(b). Sgt. Hewitson further reported that the individual was “too close” to the arrest and that the individual was “right on top of us taking photographs.”

As described previously, Sgt. Hewitson (**Board Review 45**) denied involvement in the incident with § 87(2)(b) and denied that he took any of the actions depicted in the videos. Accordingly, Sgt. Hewitson gave no justification for those actions. Sgt. Hewitson did not remember if there was an exception to the Mayoral curfew for media personnel. Sgt. Hewitson denied hearing anyone yell that they were a member of the media and said, “Not that I recall,” when asked if he saw any individuals taking photographs at West 53<sup>rd</sup> Street and 9<sup>th</sup> Avenue. Sgt. Hewitson denied hitting anyone with his baton.

The curfew order (**Board Review 52**) explicitly exempted media personnel. This exception was also reflected in the NYPD FINEST message distributed hours before the incident (**Board Review 53**).

Given the consistency of testimony from § 87(2)(b), Capt. Smith, and § 87(2)(b) recounting of § 87(2)(b) contemporaneous statements, the investigation determined that § 87(2)(b) yelled to Sgt. Hewitson that he was a member of the press or media before Sgt. Hewitson pushed him to the ground. Based on the § 87(2)(b) footage, it appears that this happened when he held out his press pass on the lanyard between Sgt. Hewitson’s two uses of force. Based on Inspector Iocco’s testimony and the video footage, the investigation credits that Sgt. Hewitson would have seen § 87(2)(b) taking photographs before using force against him.

NYPD Patrol Guide Procedure 221-01 (Board Review 55) authorizes the use of force when it is “reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.”

Property damage claims are properly analyzed under the Fourth Amendment’s reasonableness standard. Onderdonk v. State, 170 Misc. 2d 155 (1996) (**Board Review 59**).

According to Patrol Guide Procedure 203-29 (Board Review 72), “Individuals have a right to lawfully observe and/or record police activity including, but not limited to detentions, searches, arrests or uses of force. This right extends to individuals in public places, such as streets [and] sidewalks... This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individual(s) who are observing/videotaping.” Officers may not: “(1) Threaten, intimidate, or otherwise discourage an observer from recording the police officer’s activities; or (2) Intentionally block or obstruct cameras or other recording devices when there is no legitimate law enforcement reason to do so.”

According to Patrol Guide Procedure 212-49 (Board Review 73), officers “will not interfere with the videotaping or the photography of incidents in public places.”

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§ 87(2)(b) was exempt from the curfew as a member of the media and had a right to photograph § 87(2)(b) arrest. When Sgt. Hewitson charged at him and used force against him initially, § 87(2)(b) was taking photographs of an arrest in a public place from several feet away—a safe distance that even the arresting officers being photographed did not describe as being an issue—without making any attempt to interfere in the arrest or harm anyone. § 87(2)(g)

The investigation was unable to determine whether Sgt. Hewitson’s initial use of force specifically included a baton strike to § 87(2)(b) face. The § 87(2)(b) footage shows some physical contact, but it does not provide sufficient clarity to show whether Sgt. Hewitson’s baton made contact with § 87(2)(b). None of the witnesses could corroborate or refute § 87(2)(b) allegation on this point. The source of § 87(2)(b) own belief that Sgt. Hewitson struck him with a baton was rooted solely in his own post hoc interpretation of the § 87(2)(b) footage while being interviewed by law enforcement agents, rather than his own memory. Sgt. Hewitson denied taking such an action, and although his testimony has significant credibility problems as detailed in **Allegation M**, § 87(2)(g)

Sgt. Hewitson’s second use of force—pushing § 87(2)(b) to the ground from behind as he fled—§ 87(2)(g). By that point, § 87(2)(b) had verbally and nonverbally identified himself as a member of the media, had retreated several steps, and had turned his back entirely to run away. Even if Sgt. Hewitson had legitimately perceived § 87(2)(b) as a physical threat to Lt. Cuce and Capt. Smith, such a threat clearly had dissipated by the time § 87(2)(b) was across the street and running away. Moreover, Sgt. Hewitson ran away from § 87(2)(b) and made no effort to put him into custody after shoving him to the ground, which further indicates that he did not believe § 87(2)(b) continued to pose a threat to Lt. Cuce and Capt. Smith. § 87(2)(g)

The damage to § 87(2)(b) camera directly resulted from Sgt. Hewitson shoving him to the ground. § 87(2)(g)



Under Patrol Guide Procedure 203-29, § 87(2)(b) had a right to photograph § 87(2)(b) arrest as it occurred in a public place. Sgt. Hewitson had no legitimate reason to curtail his right to photograph. As described previously, § 87(2)(b) posed no safety risk through his photography and was not suspected of violating any laws—indeed, he was exempt from the curfew specifically because he was a member of the media documenting the protests. § 87(2)(g)

**Allegation (L) Force: An officer used physical force against an individual.**

§ 87(2)(b) (Board Review 71) observed the officers taking enforcement action at West 53<sup>rd</sup> Street and 9<sup>th</sup> Avenue from his § 87(2)(b) apartment on the western side of 9<sup>th</sup> Avenue between West 53<sup>rd</sup> Street and West 52<sup>nd</sup> Street. § 87(2)(b) first three videos (Board Review 03–05) show his vantage point from this location. Shortly after the incident with § 87(2)(b) observed two unidentified male officers dressed in uniform holding onto the arms of an unidentified Black man whom § 87(2)(b) did not know and could not further describe. It appeared that the first two officers had the man under control. Suddenly, another unidentified male officer in uniform ran up to the man and pushed him in the back with two hands, causing the man and the first two officers to stumble but not fall down. § 87(2)(b) did not know what happened beforehand or why the man was apparently in custody. The officers led the man further south down 9<sup>th</sup> Avenue—away from the Midtown North Precinct stationhouse—so § 87(2)(b) did not know if he was formally arrested or issued a summons, or if so, where he was processed. § 87(2)(b) recorded a fourth video, which captures this allegation in its entirety but ends before the officers lead the man away from the scene (Board Review 06). § 87(2)(b) was unable to differentiate among the three officers involved in this portion of the incident and could not provide any reliable descriptions of their appearances.

§ 87(2)(b) reporter § 87(2)(b) recorded a brief video (Board Review 15), the beginning of which shows officers surrounding the unidentified man in question. The video does not assist in identifying any officers as no identifying information or faces are clearly visible in the footage. § 87(2)(b) provided a telephone statement (Board Review 69) and stated that he believed the Black man apprehended in that video was arrested. Before the officers apprehended the man, he was simply walking away from the officers on the sidewalk.

None of the officers interviewed—Lt. Cuce, Capt. Smith, Sgt. Hewitson, and Inspector Iocco—witnessed this portion of the incident happen in real time, nor could they identify any officers who were in the nearby area by reviewing video footage. The investigation was unable to identify any of the officers in the video footage from this portion of the incident. To date, the CCRB has not received any further complaints by or on behalf of the unidentified man. The investigation could not determine whether he was arrested or issued any summonses, or if he did, where he was processed. It appears unlikely that he was processed at the Midtown North Precinct stationhouse. The apprehension occurred barely over a block from the stationhouse and other nearby arrestees, such as § 87(2)(b) were brought back to the stationhouse on foot. Yet § 87(2)(b) testified that the unidentified man was walked in the other direction, heading away from the stationhouse. The citywide criminal summons log for that night has negative results for any relevant summonses regarding the unidentified man or this incident (Board Review 74).

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**Allegation (M) Untruthful Statement: Sergeant Christopher Hewitson provided a false official statement to the CCRB.**

As described previously, Sgt. Hewitson refused in his CCRB interview (Board Review 45) to acknowledge that he was the sergeant who used force against § 87(2)(b) and in various ways denied taking the actions depicted in the footage. There were several portions of Sgt. Hewitson's

CCRB testimony § 87(2)(g) statements at issue here. They are reproduced verbatim below with time-stamp citations to the interview audio.

The first group of § 87(2)(g) statements were made by Sgt. Hewitson before he was shown any photos or videos of the incident. Between 25:29–26:27 in the interview audio, the following verbatim exchange occurred:

**Inv. O'Shea:** “And did you have any other interactions with other civilians after you assisted with that—the stop [of the two civilians] by the construction?”

**Sgt. Hewitson:** “Just to—just to move people along, a few—you know, not many at that time. That was pretty much the end of it. Not the end, but that was pretty much where, they had already passed me by.”

**Inv. O'Shea:** “Okay, and I—I want to focus specifically on—on, on those interactions of you helping ‘move people along.’ Can you kind of explain in some more detail what, specifically, you were doing to move people along after you assisted with the stop by the construction site?”

**Sgt. Hewitson:** “Mostly just verbal commands, just telling people, ‘Go home, that’s it, you can’t be out here, the Mayor (inaudible).’ That’s it.”

**Inv. O'Shea:** “Okay, did you do anything else besides giving verbal commands?”

**Sgt. Hewitson:** “Uh, like I said, sometimes (inaudible) people were—cops were moving people down the block and you were escorting them down the block.”

**Inv. O'Shea:** “Okay, and is—is that something that you, yourself, were doing as well?”

**Sgt. Hewitson:** “I was mostly just giving verbal commands.”

Between 27:01–28:08 in the interview audio, the following verbatim exchange occurred:

**Inv. O'Shea:** “Okay, were there any individuals present who appeared to be taking photographs—like, civilians—during that time?”

**Sgt. Hewitson:** “Not that I recall.”

**Inv. O'Shea:** “Okay, did you ever have an interaction with someone who was taking photographs?”

**Sgt. Hewitson:** “Not that I recall.”

**Inv. O'Shea:** “Okay, and did you have any kind of a—like, a baton or a nightstick or an asp with you during this time?”

**Sgt. Hewitson:** “Uh, yes, I’m sure I had my nightstick and my helmet on.”

**Inv. O'Shea:** “Okay, and did you ever strike any individual with your nightstick?”

**Sgt. Hewitson:** “No.”

**Inv. O'Shea:** “Okay, did you ever, like, use any kind of physical force on any civilians at 53<sup>rd</sup> and 9<sup>th</sup>?”

**Sgt. Hewitson:** “Not—not any kind of physical force, no.”

**Inv. O'Shea:** “Okay. Did you make physical contact with any civilians at that intersection?”

**Sgt. Hewitson:** “Some people, you know, I may have put my hand on them to move them along to go down the block, but that’s about it.”

**Inv. O'Shea:** “Okay, and the—the people that you might have been, kind of, guiding down the block, moving them along as you mentioned, did any of them fall over as a result of you making that physical contact with them?”

**Sgt. Hewitson:** “No.”

Finally, between 32:03–32:21 in the interview audio, the following verbatim exchange occurred:

**Inv. O'Shea:** “And so—at any point at 53<sup>rd</sup> and 9<sup>th</sup> Avenue did you ever push an individual such that he fell onto the ground?”

**Sgt. Hewitson:** “Not that I recall.”

**Inv. O'Shea:** “Okay, um, do you remember pushing anybody that night at all?”

**Sgt. Hewitson:** “Not that I recall, no.”

The second group of § 87(2)(g) statements were made by Sgt. Hewitson directly in response to

viewing photos and videos of the incident. Between 41:33–43:42 in the interview audio, Sgt. Hewitson reviewed § 87(2)(b) video (**Board Review 17**). Sgt. Hewitson recognized the video to depict the intersection of West 53<sup>rd</sup> Street and 9<sup>th</sup> Avenue. Between 43:11–43:24 in the interview audio, the following verbatim exchange occurred:

**Inv. O'Shea:** "In the video that I just played, there was an individual who pushed the individual to the ground. Did you see that happen in the video?"

**Sgt. Hewitson:** "Yes."

**Inv. O'Shea:** "Okay, was that you pushing the individual in the video?"

**Sgt. Hewitson:** "Not that I—no."

Then, between 49:17–51:48 in the interview audio, Sgt. Hewitson reviewed the § 87(2)(b) footage (**Board Review 30**). The following verbatim exchange occurred between 51:32–51:45:

**Inv. O'Shea:** "Sergeant, is that you in the video having this interaction with this person, in the portion we just played?" [referring to the footage of an officer pushing § 87(2)(b) immediately after the clip of § 87(2)(b) giving an interview to the camera]

**Sgt. Hewitson:** "Not that I recall."

Next, between 52:26–52:57 in the interview audio, Sgt. Hewitson viewed a series of screenshots of § 87(2)(b) footage (video at **Board Review 17**; screenshots at pages 5 and 6 of the PDF in **Board Review 47**), and the following verbatim exchange occurred:

**Inv. O'Shea:** "Okay, so this is a screenshot from that video (*showing page 5 of PDF at Board Review 47*), it's the first one that I'm showing, do you see this male officer in uniform in the—in the picture, sergeant?"

**Sgt. Hewitson:** "I do."

**Inv. O'Shea:** "Okay, and do you recognize who that is?"

**Sgt. Hewitson:** "No."

**Inv. O'Shea:** "Okay, is that you in the photograph?"

**Sgt. Hewitson:** "I cannot identify myself as being in that photograph, no."

**Inv. O'Shea:** "Okay, understood. And then how about in this photograph here (*showing page 6 of the PDF at Board Review 47*), just the second one?"

**Sgt. Hewitson:** "No, I can't identify myself."

It should be noted that the latter screenshot shown to Sgt. Hewitson in the above-quoted section is the same screenshot that Inspector Iocco identified as depicting Sgt. Hewitson.

The third group of § 87(2) statements were made by Sgt. Hewitson at the end of his interview, once he had been shown numerous angles of footage and photos of the incident. Between 53:00–54:07 in the interview audio, the following verbatim exchange occurred:

**Inv. O'Shea:** "So, far as the interactions that you had at 53<sup>rd</sup> and 9<sup>th</sup> with people—I know you've described to me, you know, also that you had kind of, the days are kind of blending together with multiple different protests. But at any point at 53<sup>rd</sup> and 9<sup>th</sup>, did you ever push someone to the ground?"

**Sgt. Hewitson:** "No."

**Inv. O'Shea:** "Okay, understood. And did you ever hit anyone with your baton?"

**Sgt. Hewitson:** "No."

**Inv. O'Shea:** "Okay, did you ever use your baton in interacting with someone in any way?"

**SBA Representative:** "You've got to be more specific than that."

**Inv. O'Shea:** "Well, that's the question. Did you ever use your baton in any way in interacting with anybody?"

**SBA Representative:** "When, where, are you talking about?"

**Inv. O'Shea:** "At 53<sup>rd</sup> and 9<sup>th</sup>."

**SBA Representative:** "Okay, that's—that's what I'm asking."

**Sgt. Hewitson:** "I'm sorry, repeat the question?"



**Inv. O'Shea:** "At 53<sup>rd</sup> and 9<sup>th</sup>, on the night of June 2<sup>nd</sup>, did you ever use your baton in any way while interacting with a civilian?"

**Sgt. Hewitson:** "I had my baton with me, um, do I remember—did I strike anybody with my baton? No."

**Inv. O'Shea:** "Okay, and did you do any—aside from just carrying your baton, did you do anything with it, whether that's striking someone or pushing them or touching them with it, or anything at all with the baton?"

**Sgt. Hewitson:** "Not that I recall."

Then, between 55:20–55:53 in the interview audio, the following verbatim exchange occurred:

**Inv. O'Shea:** "Now, at any point at 53<sup>rd</sup> and 9<sup>th</sup> on the night of June 2<sup>nd</sup>, do you remember interacting with anyone who had a camera with them?"

**Sgt. Hewitson:** "That had a what with them?"

**Inv. O'Shea:** "A camera, like a photography camera, as opposed to just a cell phone."

**Sgt. Hewitson:** "Not that I recall."

**Inv. O'Shea:** "Okay, understood. Did you ever see an individual falling to the ground and their camera breaking at that intersection?"

**Sgt. Hewitson:** "Not that I recall."

Finally, between 58:43–59:51 in the interview audio, the following verbatim exchange occurred:

**Inv. O'Shea:** "Okay, so it was alleged by § 87(2)(b) one of the complainants in this case—and he's the individual being pushed to the ground in the videos that I was showing you earlier—that a white male sergeant who was a few inches shorter than 6'0", in uniform, with a riot helmet and a Taser on his left side ran up to him and had an interaction with him. Did you have any such interaction with him?"

**Sgt. Hewitson:** "Not that I recall."

**Inv. O'Shea:** "Okay, he also alleged that he was struck in the face with a baton. Did that happen?"

**Sgt. Hewitson:** "No."

**Inv. O'Shea:** "Okay, and did you do that to him?"

**Sgt. Hewitson:** "No."

**Inv. O'Shea:** "Okay, did you see anyone photographing any of the arrests at 53<sup>rd</sup> and 9<sup>th</sup>?"

**Sgt. Hewitson:** "Uh, I don't recall anyone taking pictures."

**Inv. O'Shea:** "Alright, did you ever hear anyone yelling out that they were a member of the media or of the press?"

**Sgt. Hewitson:** "No."

**Inv. O'Shea:** "Okay, understood. And it was also alleged by § 87(2)(b) that when the officer pushed him to the ground as shown in the video, that it caused his camera to break on the ground. Did you do that?"

**Sgt. Hewitson:** "No."

The NYPD categorically prohibits officers from intentionally making a false official statement, which is defined as "an intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement is made." A material fact is defined as "a significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail. Statements made during an official CCRB interview are covered by this Procedure. NYPD Patrol Guide Procedure 203-08 (Board Review 75).

Patrol Guide Procedure 203-08 further states, "When a member of the service is afforded

an opportunity to recollect with the benefit of credible evidence, and the member makes a statement consistent with the evidence, the member's prior statement will not be considered a false statement." The NYPD will not bring false official statement charges when, "as opposed to creating a false description of events, the member of the Department merely pleads not guilty in a criminal matter, or merely denies a civil claim or an administrative charge of misconduct."

In his CCRB testimony, Sgt. Hewitson provided a false account of his actions during the incident—an account which included him merely telling civilians to leave the area and perhaps making incidental physical contact with them, and which omitted that he used any physical force or that he ever interacted with § 87(2)(b). He then went on to deny, under direct questioning, his personal involvement in the aspects of the incident seen in the video evidence and recounted by the civilians involved.

§ 87(2)(g)

He was interviewed only three months after the incident, he testified to having a full recollection of his actions at that intersection, and he reviewed video evidence which would have refreshed his recollection if he had genuinely forgotten the incident. Finally, when presented with this credible evidence, Sgt. Hewitson did not change his testimony such that it was consistent with the evidence. He maintained his false account of the incident and falsely denied that he was the officer in the video footage and photographs.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- This is the first and only CCRB complaint involving § 87(2)(b) or § 87(2)(b) (Board Review 78–79)
- Aside from the duplicate complaint regarding this case, this is the first and only CCRB complaint involving § 87(2)(b) or § 87(2)(b) (Board Review 80–81).
- Lt. Cuce has been a member of service for 20 years and has been named a subject in 11 other CCRB complaints and 20 other allegations, one of which was substantiated:
  - CCRB case #201012259 involved a substantiated stop allegation against Lt. Cuce. The Board recommended Charges. The NYPD imposed Instructions.
  - § 87(2)(g)
- Capt. Smith has been a member of service for 16 years and has been named a subject in 12 other CCRB complaints and 34 other allegations, five of which were substantiated:
  - CCRB case #201307074 involved substantiated allegations of premises entered and/or searched and discourtesy against Capt. Smith. The Board recommended Instructions. The NYPD imposed no discipline regarding the entry/search, but imposed Instructions regarding the discourtesy.
  - CCRB case #201609182 involved substantiated allegations of physical force, frisk, and search of person against Capt. Smith. The Board recommended Command Discipline B. The NYPD imposed no discipline regarding the frisk, and imposed Formalized Training regarding the physical force and search of person.
  - § 87(2)(g)
- Sgt. Hewitson has been a member of service for 24 years and has been named a subject in seven other CCRB complaints and 10 other allegations, none of which was substantiated. § 87(2)(g)
- Inspector Iocco has been a member of service for 24 years and has been named a subject in two other CCRB complaints and three other allegations, none of which was substantiated. § 87(2)(g)

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- On October 8, 2020, § 87(2)(b) through his attorney, filed a Notice of Claim for \$1,000,000 (Board Review 40). § 87(2)(b) claimed damages for bodily injuries; damage to his camera and camera lens; mental anguish, emotional distress and suffering, and other psychological injuries; shame, humiliation, and indignity; damage to his reputation and credit; loss of economic advantage; restriction of freedom and violation of his rights under the U.S. and New York State Constitutions; and punitive damages.
  - § 87(2)(a)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 5



Investigator:	<u>DG</u>	<u>IM Giansante for Inv. O'Shea</u>	<u>July 27, 2021</u>
	Signature	Print Title & Name	Date
Squad Leader:	<u><i>Daniel Giansante</i></u>	<u>IM Daniel Giansante</u>	<u>July 27, 2021</u>
	Signature	Print Title & Name	Date
Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date